

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
Frontier, A Citizens Communications Company	)	CSR-6101-A
	)	
For Modification of the Los Angeles,	)	
California DMA	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: June 2, 2003**

**Released: June 6, 2003**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Frontier, A Citizens Communications Company ("Frontier") filed the above-captioned petition for special relief seeking to modify the Los Angeles, California designated market area ("DMA") with respect to television broadcast station KJLA, Ventura, California ("KJLA"). Specifically, Frontier requests that KJLA be excluded, for purposes of the cable television mandatory broadcast signal carriage rules, from its cable system serving Needles, California. No opposition to this petition has been received.<sup>1</sup> For the reasons stated below, we grant Frontier's request for modification.

**II. BACKGROUND**

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues* ("Must Carry Order"), commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's market.<sup>2</sup> A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.<sup>3</sup> A DMA is a geographic market designation that defines each television market exclusive of

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<sup>1</sup>We note that KJLA requests dismissal of this petition. It contends that Frontier's request was filed only in response to a must carry complaint KJLA filed against Frontier for carriage in Needles because Frontier stated in footnote 1 of its petition that the two petitions should be processed together. KJLA argues, however, that because it voluntarily withdrew its complaint, the instant petition is moot. Frontier maintains that it did not file its petition for special relief simply because of KJLA's complaint and it requests that its petition be processed. Frontier notes that its request for the two petitions to be processed simultaneously is standard Commission practice. We agree with Frontier. Petitioners seeking market modification may do so at any time whether or not a pending complaint for carriage exists. The withdrawal of KJLA's must carry complaint, therefore, has no effect on the status of Frontier's petition.

<sup>2</sup>8 FCC Rcd 2965, 2976-2977 (1993).

<sup>3</sup>Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. See 47 U.S.C. (continued...)

others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, both over-the-air and cable television viewing are included.<sup>4</sup>

3. Under the Act, however, the Commission is also directed to consider changes in market areas. Section 614(h)(1)(C) provides that the Commission may:

with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section.<sup>5</sup>

In considering such requests, the Communications Act provides that:

the Commission shall afford particular attention to the value of localism by taking into account such factors as –

(I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;

(II) whether the television station provides coverage or other local service to such community;

(III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community;

(IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.<sup>6</sup>

The legislative history of the provision states that:

where the presumption in favor of [DMA] carriage would result in cable subscribers losing access to local stations because they are outside the [DMA] in which a local cable system operates, the FCC may make an adjustment to include or exclude particular communities from a television station's market consistent with Congress' objective to ensure that television stations be carried in the area in which they serve and which form their economic market.

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(...continued from previous page)

§534(h)(1)(C). Section 76.55(e) requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. 47 C.F.R. § 76.55(e); see *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, 14 FCC Rcd 8366 (1999) ("Modification Final Report and Order").

<sup>4</sup>For a more complete description of how counties are allocated, see Nielsen Media Research's *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

<sup>5</sup>47 U.S.C. §534(h)(1)(C).

<sup>6</sup>*Id.*

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[This subsection] establishes certain criteria which the Commission shall consider in acting on requests to modify the geographic area in which stations have signal carriage rights. These factors are not intended to be exclusive, but may be used to demonstrate that a community is part of a particular station's market.<sup>7</sup>

In adopting rules to implement this provision, the Commission indicated that requested changes should be considered on a community-by-community basis rather than on a county-by-county basis, and that they should be treated as specific to particular stations rather than applicable in common to all stations in the market.<sup>8</sup>

4. In the *Modification Final Report and Order*, the Commission, in an effort to promote administrative efficiency, adopted a standardized evidence approach for modification petitions that requires the following evidence be submitted:

(1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market.

(2) Grade B contour maps delineating the station's technical service area and showing the location of the cable system headends and communities in relation to the service areas.

Note to Paragraph (b)(2): Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit.<sup>9</sup>

(3) Available data on shopping and labor patterns in the local market.

(4) Television station programming information derived from station logs or the local edition of the television guide.

(5) Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.

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<sup>7</sup>H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

<sup>8</sup>*Must Carry Order*, 8 FCC Rcd at 2977 n.139.

<sup>9</sup>The Longley-Rice model provides a more accurate representation of a station's technical coverage area because it takes into account such factors as mountains and valleys that are not specifically reflected in a traditional Grade B contour analysis. In situations involving mountainous terrain or other unusual geographical features, Longley-Rice propagation studies can aid in determining whether or not a television station actually provides local service to a community under factor two of the market modification test.

(6) Published audience data for the relevant station showing its average all day audience (i.e., the reported audience averaged over Sunday-Saturday, 7 a.m.-1 a.m., or an equivalent time period) for both cable and noncable households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.<sup>10</sup>

Petitions for special relief to modify television markets that do not include the above evidence shall be dismissed without prejudice and may be re-filed at a later date with the appropriate filing fee. The *Modification Final Report and Order* provides that parties may continue to submit whatever additional evidence they deem appropriate and relevant.

### III. DISCUSSION

5. The issue before us is whether to grant Frontier's request to exclude KJLA from mandatory carriage on its cable system serving Needles, California. Needles is located in San Bernardino County, California which is considered part of the Los Angeles DMA. KJLA is licensed to Ventura, California which is also located in the Los Angeles DMA. Considering all of the relevant factual circumstances in the record, we believe that Frontier's market modification petition is a legitimate request to redraw DMA boundaries to make them congruous with market realities.

6. The first statutory factor we must consider is "whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community."<sup>11</sup> Frontier states that it has never carried KJLA on its Needles cable system.<sup>12</sup> Frontier states that KJLA has been historically unable to deliver a good quality signal to the Needles cable system and thus has never been a qualified local television station for must carry purposes.<sup>13</sup> Frontier states further that, according to the 2002 edition of Television and Cable Factbook, KJLA is not carried by any other nearby cable systems.<sup>14</sup>

7. Second, we consider "whether the television station provides coverage or other local service to such community."<sup>15</sup> Frontier argues that KJLA does not provide any local programming to the community at issue.<sup>16</sup> According to the evidence, KJLA offers programming which is general in nature and not geared to a specific community.<sup>17</sup> Frontier points out that the Commission has stated that general interest programming is insufficient to satisfy the local programming factor in modification cases.<sup>18</sup> Frontier notes that, as evidenced by the system's channel line-up information, it carries broadcast stations

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<sup>10</sup>47 C.F.R. §76.59(b).

<sup>11</sup>47 U.S.C. §534(h)(1)(C).

<sup>12</sup>Modification Petition at Exhibit A.

<sup>13</sup>*Id.* at 3, citing 47 U.S.C. § 534(h)(1)(B)(iii).

<sup>14</sup>*Id.* at Exhibit C.

<sup>15</sup>47 U.S.C. §534(h)(1)(C).

<sup>16</sup>Modification Petition at 4-5.

<sup>17</sup>*Id.* at Exhibit H.

<sup>18</sup>*Id.* at 8-9, citing *Greater Worcester Cablevision*, 12 FCC Rcd 17347 (1997); *TKR Cable Company*, 12 FCC Rcd 8414 (1997), *recon. denied*, 14 FCC Rcd 9603 (1999); *Home Link Communications of Princeton, L.P.*, 13 FCC Rcd 1578 (1997), *recon. denied*, 14 FCC Rcd 9603 (1999).

licensed to Las Vegas, Nevada and Prescott and Phoenix, Arizona; stations that have a more direct connection to Needles than does KJLA.<sup>19</sup> Frontier states that not only is KJLA's city of license geographically distant at 269 miles, but it fails to provide a Grade B signal to the system.<sup>20</sup> Frontier states that such a distance precludes any commercial ties between the two areas.<sup>21</sup> Moreover, this distance is greater than that found in almost every market modification petition brought before the Commission where the Bureau determined that a station was not local to the communities in question.<sup>22</sup> Frontier states that, in addition to distance, Needles and KJLA are separated by geographic features such as the Mojave Desert, several mountain ranges and the San Bernardino National Forest as well as political boundaries.<sup>23</sup> Frontier notes that the Commission has repeatedly stated that political and natural boundaries can act to separate communities from television stations in market modification proceedings.<sup>24</sup>

8. The third statutory factor we must consider is "whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community."<sup>25</sup> Frontier states that numerous nearby stations carried on its system provide extensive local programming on a regular basis.<sup>26</sup> Frontier states that these stations provide news and local programming that is specifically geared to Needles.<sup>27</sup> Moreover, Frontier notes that, unlike KJLA, these stations are listed in the *Needles Desert Star*, a local paper serving the subject community, and the local edition of *TV Guide*.<sup>28</sup>

9. The fourth statutory factor concerns "evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community."<sup>29</sup> Frontier states that, according to a report prepared by a marketing and research consulting firm, KJLA has no reportable viewing in either Needles or San Bernardino County.<sup>30</sup> In addition, Frontier notes that KJLA is not considered significantly viewed in San Bernardino County and it is not listed in either the local papers or

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<sup>19</sup>*Id.* at 4.

<sup>20</sup>*Id.* at Exhibits D and E.

<sup>21</sup>*Id.* at Exhibit F.

<sup>22</sup>*Id.* at 6, citing *Greater Worcester Cablevision, Inc.*, 13 FCC Rcd 22220 (1998) (39-70 miles); *Mid-Hudson Cablevision, Inc.*, 15 FCC Rcd 5011 (2000) (average 47 miles); *Blue Ridge Cable Technologies, Inc.*, 14 FCC Rcd 2320 (1999) (43 miles).

<sup>23</sup>*Id.* at Exhibits F and G. Frontier states that part of its system extends into Arizona.

<sup>24</sup>*Id.* at 7, citing *Adelphia Cablevision Associates, L.P.*, 14 FCC Rcd 7686 (1999); *Rifkin/Narragansett South Florida CATV Limited Partnership d/b/a Gold Coast Cablevision*, 11 FCC Rcd 21090 (1996), *recon. denied*, 14 FCC Rcd 13788 (1999); *Time Warner New York City Cable Group*, 11 FCC Rcd 6528 (1996); *Time Warner New York City Cable Group*, 12 FCC Rcd 13094 (1996), *recon. denied*, 12 FCC Rcd 12262 (1997); *Comcast of Central New Jersey*, 13 FCC Rcd 1656 (1997).

<sup>25</sup>47 U.S.C. §534(h)(1)(C).

<sup>26</sup>Modification Petition at 10 n.30.

<sup>27</sup>*Id.* at Exhibits I and K.

<sup>28</sup>*Id.* at Exhibits J and K.

<sup>29</sup>47 U.S.C. §534(h)(1)(C).

<sup>30</sup>Modification Petition at Exhibit L.

local edition of *TV Guide*.<sup>31</sup>

10. Section 614(h)(1)(C) of the Communications Act authorizes the Commission to include or exclude particular communities from a television station's market for the purpose of ensuring that a television station is carried in the areas which it serves and which form its economic market.<sup>32</sup> Section 614(h)(1)(C)(i) specifically and unambiguously directs the Commission, in considering requests for market modification, to afford particular attention to the value of localism by taking such matters into account.<sup>33</sup> In this matter, KJLA has no history of carriage and no discernable viewership in the community at issue. It does not appear that any proximate cable systems carry KJLA. It is also clear that KJLA is geographically distant from the communities at 269 miles, that its predicted Grade B contour falls far short of Needles, and that the station is separated from Needles by numerous geographic barriers such as the San Gabriel Mountains and the San Bernardino National Forest. These factors also tend to explain the history of non-carriage of the station on Frontier's cable system and strongly indicate that Needles is too distant to properly be a part of KJLA's television market.

#### IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended, 47 U.S.C. §534, and Section 76.59 of the Commission's rules, 47 C.F.R. §76.59, that the captioned petition for special relief (CSR-6101-A), filed by Frontier, A Citizens Communications Company **IS GRANTED**.

12. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.<sup>34</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division  
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<sup>31</sup>*Id.* at 14.

<sup>32</sup>47 U.S.C. § 534(h)(1)(C).

<sup>33</sup>47 U.S.C. § 534(h)(1)(C)(i).

<sup>34</sup>47 C.F.R. §0.283.